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EXAMINER

LIGHTFOOT, ELENA TSOY

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/671,969
Filing Date: September 26, 2003
Appellant(s): BAKER ET AL.

Denise M. Everett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 1, 2008 appealing from the Office action mailed July 30, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

JP 10276961A	WATANABE	10-1998
5,306,435	ISHIKAWA ET AL	4-1994
CN1052685A	WU ET AL	7-1991
JP 09271597A	YOSHIOKA	10-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 76, 83-93 and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe (JP 10276961) in view of Ishikawa et al (US 5306435) and Wu et al (CN 1052685A).

Watanabe discloses a shoe **washing** method specifically suited for washing *ordinary* (claimed natural leather) (See page 7, lines 1-2) *leather* shoes (See P1) that enables to remove **dirt** *without deforming and harming the shoes* (See Abstract). In the past, washing leather shoes was considered to impossible because washing caused the leather shoes to lose their shape or damage the shoes (See P2). However, present invention provides a washing method and a detergent, which enable the removal stains, odor and bacteria without damaging the shoes (See P5). The detergent composed of vegetable ingredients is diluted with acidic ion water, and then herbal oil extract is added. The method comprises washing the inner part and the outer part of shoes (See P10). The inner part of the shoes is washed by spraying a water solution of a *gel* detergent A *inside* the shoes by pressure (See P10-12). The detergent A is composed of palm oil (conditioning agent) and soap (including a *surfactant*), amino acid group containing water at pH5, orange fruit *surfactant*, herbal oil extract (See P13-2), and enzyme protease (See P14). The inner part of the shoes is wiped by *brush* (See P14-3). The outside of the shoes may be quickly washed (See page 8, (7) using a *gel* detergent B made by mixing **palm oil**, glycerin, **palm kernel oil**, lanolin and **wax** with acidic water (See P15). A softening agent is sprayed and dried, then a fluorine containing water repellent is sprayed onto the outer part of the shoes (See P16).

Watanabe does not explicitly disclose that ordinary leather includes Cr-tanned leather.

However, it is well known in the art that Chromium is the predominant tanning material used in leather for shoes and it imparts significant added strength and temperature resistance to the leather." (See Appellants' Published Application, P132). Since Watanabe does not limit its teaching to shoes made from specifically tanned leather, obviously, the ordinary leather of Watanabe includes Cr-tanned leather. Therefore, it could be assumed that washing method of Watanabe that specifically suited for washing ordinary *leather* (claimed natural leather) shoes that enables to remove dirt *without deforming and harming the shoes* does not lead to loss of significant level of Chromium from the leather. Further, it is also well known to those of ordinary skill in the art is to use **Ca/Mg removal agents** (many of which are often referred to as "builders") in aqueous cleaning systems is to bind or sequester, or otherwise remove the Ca and Mg divalent ions normally present in both soils such as the clay, dirt, mud and water (See P124 of Appellants' Published Application).

Therefore, Watanabe discloses implicitly claimed delivering an effective level of *Ca/Mg removal agents without removing significant levels of chromium* from the ordinary (natural) leather since Watanabe removes *dirt* from the ordinary leather shoes and does not damage the ordinary leather shoes. MPEP 2112 states that the express, *implicit*, and *inherent* disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. "The inherent teaching of a prior art reference, a question of fact, arises both in the context of anticipation and obviousness." In re Napier, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784 (Fed. Cir. 1995) (affirmed a 35 U.S.C. 103 rejection based in part on inherent disclosure in one of the references). See also In re Grasselli, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983).

Note also that according to Applicants' specification, claimed treating composition may be in the form of *gel* (See P94 of Published Application), and may comprise *benefit* agents including *conditioning* agent (See P90 of Published Application) such as *oil* or *wax* (See P333 of Published Application), "*builders*" (See P124 of Published Application) and *surfactants* (See P178-181 of Published Application).

Thus, a method of Watanabe reads on claimed method of treating natural leather shoes by applying a treating composition diluted in water (claimed applying indirectly) to the leather shoes a treating composition comprising one or more benefit agents during washing the shoes with an aqueous medium wherein said treating composition is formulated to deliver an effective level of *Ca/Mg removal agents* (since Watanabe removes *dirt* from the ordinary leather shoes) *without removing significant levels of chromium* from the ordinary (natural) leather (since Watanabe does not damage the ordinary leather shoes).

Although claimed invention would be obvious over express and implicit teaching of Watanabe, the Examiner applied secondary references of Ishikawa et al and Wu et al to further clarify her position.

Watanabe teaches that leather is ordinary leather (See P12). Watanabe is silent about not removing significant levels of a tanning agent such as chromium from the leather during washing (Claim 76). However, it is well known in the art that ordinary leather used for making cloth and shoes generally is a tanned leather; and the leather is tanned using conventional tanning agent such as *chromium* salt, as evidenced by Ishikawa et al teaching that *chromium* salt is generally used for *tanning leather* (See column 13, lines 4-10); and tanned leather is used for

making *shoes* (See column 12, lines 35-36). Therefore, the *ordinary* leather in Watanabe is tanned leather.

Since washing leather shoes in Watanabe does not damage the shoes, it is the Examiner's position that the tanned leather stays practically intact after washing, i.e. the washing does not remove any significant amount of important components of the leather including *any* tanning agent such as chromium.

Since the detergent of Watanabe is capable of removing dirt, it is the Examiner's position that the detergent in Watanabe delivers a calcium/magnesium removal agent to the shoes because the dirt normally contains calcium and magnesium, as evidenced by Wu et al teaching that casual leather shoes *decontamination* agent (claimed cleaning composition) comprising *surfactant*, lustring agent, colloid, moisture retainer, and deionised water (claimed gel), removes calcium and magnesium (See title).

As to claims 85, 90-92, it is noted that: (i) recitation of washing machine in claim 85, does not imply damaging mechanical agitation because current washing machines offer excellent protection of delicate articles against mechanical damage. For example, articles made of delicate material that previously could be washed only by gentle hand washing to avoid damaging mechanical agitation, now can be washed in a gentle cycle of a washing machine that vibrates/shakes the articles instead of mechanical agitation to prevent damage to the material.

(ii) limitations of claim 85 and 90-92 relating to washing shoes in washing machines are *optional* because independent claim 76 recites that washing may be carried out *with* aqueous medium (i.e. non-immersion washing) or in aqueous medium (i.e. immersion washing).

As to optional immersion washing, Watanabe fails to teach that shoes are placed into a flexible bag. However, it is also well known in the art that placing delicate articles in a flexible bag offers further protection from mechanical damage.

As to claim 89, it is well known in the art to apply a detergent directly to stains before machine washing.

As to claim 119, it is the Examiner's position that a gel applied to the shoes by brush and placed into a flexible bag would be released into water during the wash cycle.

Claims 85, 90-92, 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watanabe as applied above, and further in view of Yoshioka (JP 09271597).

Watanabe fails to teach that shoes are placed into a flexible bag. However, Yoshioka teaches that shoes can be washed in flexible bags to prevent damage to shoes (See Abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have placed shoes in flexible bags before washing in cited prior art with the expectation of preventing damage to shoes, as taught by Yoshioka.

(10) Response to Argument

Applicant's arguments filed December 1, 2008 have been fully considered but they are not persuasive.

1. Appellants traverse the rejection of claims 76, 83-93, and 119 under 35 U.S.C. §103(a) as being unpatentable over Watanabe et al. in view of Ishikawa et al. and Wu et al.

(A) Appellants describe the Examiner's ground of rejection.

(B) **The Examiner's makes an improper stipulation of fact and draws an unreasonable inference in her application of Watanabe to the claimed invention.**

(i) Appellants submit that independent claim 76 is directed to a method for treating one or more shoes comprising at least one surface made from a natural leather. In pertinent part, the method comprises application of treating compositions formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather, which results in a decrease in relative damage to a shoe as a result of washing the one or more shoes with or in an aqueous medium with application and without application of the treating composition. The instant specification provides several pages of ample and specific guidance on formulation manipulations which achieve this formulation limitation. Appellants note that these manipulations involve multiple formulation factors. The primary reference Watanabe, on the other hand, is directed to cleaning methods for shoes that involve low pressure-spray application of vegetable-based compositions to the interior of shoes. Watanabe seeks to solve problems in the art associated with washing the insides of shoes without resorting to immersion in aqueous solutions or mechanical agitation, which damage shoes.

The Examiner respectfully disagrees with this argument.

As to claimed formulation limitation and formulation manipulations, in response to applicant's argument that primary reference Watanabe fails to show certain features of claim 76, it is noted that the features upon which applicant relies (i.e., the formulation limitation and formulation manipulations as provided by several pages of ample and specific guidance in the Appellants specification to achieve said formulation limitation) are **not** recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

As to claimed immersion in aqueous solutions, claim 76 recites treating shoes *with or in* aqueous medium prior to and/or during washing. In other words, *immersion* in aqueous solutions such as in washing machine is **optional**, and claim 76 reads on non-immersion washing as well.

As to mechanical agitation which damage shoes, these features upon which Appellants rely, are **not** recited in claim 76.

Therefore, in contrast to Appellants' argument, Watanabe reads expressly and implicitly on claims 76, 85 and 90-92.

(ii) Appellants submit that Watanabe teaches spraying a detergent under pressure so that the detergent is dispersed uniformly inside the shoe without scrubbing or brushing or requiring that the detergent remain in the shoe for long periods of time. This, according to Watanabe, on the other hand, is directed to cleaning methods for shoes that involve low pressure-

spray application of vegetable-based compositions to the interior of shoes. Watanabe seeks to solve problems in the art associated with washing the insides of shoes without resorting to immersion in aqueous solutions or mechanical agitation, which damage shoes. Watanabe teaches spraying a detergent under pressure so that the detergent is dispersed uniformly inside the shoe without scrubbing or brushing or requiring that the detergent remain in the shoe for long periods of time. This, according to Watanabe, prevents the associated damage to leather. Appellants submit that when Watanabe claims his methods do not damage shoes, Watanabe is referring to the damage identified by Watanabe, that is, the damage caused by immersion and mechanical agitation. Notably, the instant methods contemplate both immersion and mechanical agitation (ordinary washing machine based washing, e.g.)

As discussed above, *mechanical agitation* is not recited in claims, and *immersion* in aqueous solutions is optional. Note that recitation of washing machine in claim 85, does not imply damaging mechanical agitation because current washing machines offer excellent protection of delicate articles against mechanical damage by shaking/vibrating the articles such that delicate hand washable articles can be washed in washing machines.

(iii) Appellants submit that when Watanabe does not identify the relevant damage as that caused by inadvertent removal of Chromium ions from tanned leather. The Examiner makes a reaching, unsupported and therefore improper stipulation that since Watanabe claims that his methods "do not damage shoes," the detergents employed in the Watanabe methods must therefore remove Ca and Mg ions without removing Cr ions from the leather portion of shoes.

The Examiner respectfully disagrees with this argument. MPEP 2112 states that the express, *implicit*, and *inherent* disclosures of a prior art reference may be relied upon in the rejection of claims under 35 U.S.C. 102 or 103. Therefore, in contrast to Appellants' argument, the Examiner's position based on *implicit* and *inherent* teaching of Watanabe is correct.

(iv) Appellants submit that Watanabe never acknowledges nor attempts to address the damage to shoes caused by nonspecific detergents. Watanabe never discusses impact of detergent on the leather portion of a shoe and never discloses detergent formulation as a means to control or prevent damage to the leather portions of shoes during washing.

The argument is unconvincing because the features upon which applicant relies (i.e., the damage to shoes caused by nonspecific detergents) are **not** recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(v) Appellants submit that Watanabe seeks to minimize exposure to water to prevent mold formation and water/detergent penetration to the inner core of the shoe material. In another embodiment Watanabe adds a final step of sprinkling a fluorine- repelling system over the exterior of the shoe. Once again, Watanabe notes that by keeping the actual wash portion of the process to less than 15 minutes, mold formation and bruising are prevented. With respect specifically to damaging shoes by the cleaning process, Watanabe notes that "as a result of shortening working hours" (P18) and as a result of the fact that the detergent never permeates the core of the shoe (P18), mold and damage to the leather are prevented." Watanabe also notes that the pressure of the spray may be adjusted to prevent damage, and that the extreme drying methods may prevent mold related damage to leather.

The argument is unconvincing because claims do not recite time of exposure to water. Moreover, in any method including Appellants method, the longer wash the more damage would be done.

C. The combination of Watanabe, Ishikawa and Wu fails to establish a prima facie case of obviousness.

The detergents disclosed by Watanabe are conventional and are disclosed to include a high percent of soap (28%, e.g. P13), acidic conditions, and the presence of anionic surfactant systems (P13). Appellants do not dispute the Examiner's contention that the detergents of Watanabe remove transition metal ions from the shoes, including Ca/Mg and Cr. Indeed, the detergent formulations of Watanabe specifically include ingredients instantly disclosed as having the potential to remove chromium (see Specification, e.g. page 25, lines 26-35, providing guidance on formulation manipulations which preserve chromium in leather). Ishikawa is applied to evidence that it is common knowledge in the art that "chromium salt" is generally used for tanning leather. Appellants do not disagree with the statement that tanning may be achieved via vegetable or mineral tanning agents, and that a common mineral tanning agent is chromium. Watanabe mentions "leather" in several places and Appellants agree that the leather intended for use in clothing and shoes is necessarily tanned and that the term "leather" in this context includes Cr-tanned leather within its scope. Wu is a one paragraph Chinese patent abstract with very limited disclosure. It is applied for supporting the Examiner's contention that "dirt normally contains calcium and magnesium so that anything that removes "dirt" removes these elements." Wu discloses a decontaminating composition for leather shoes that includes many ingredients such as brightening agents, surfactants, bactericides, and fatty cleaning agents. Wu discloses that the composition removes Ca and Mg. Appellants do not find this disclosure relevant to the question of whether the methods remove chromium ions from leather portions of shoes, and Wu fails to provide guidance on this aspect or to overcome the deficiencies of Ishikawa and Watanabe.

The Examiner respectfully disagrees with this argument. First of all, the detergents disclosed by Watanabe are not conventional. Second, the detergents disclosed by Specification on page 25, lines 26-35, providing guidance on formulation manipulations which preserve

chromium in leather, are not recited in the claims. Third, in contrast to Appellants statement, the Appellants Published Application discloses: "Apart from the above restrictions and learnings, **any conventional** Ca/Mg removal agent, organic and/or inorganic, is suitable for use herein" (See P142), i.e. specifically include ingredients instantly disclosed as having the potential to remove chromium; and the detergent formulations of Appellants include **any conventional surfactants** (See P179-181).

Wu is applied merely as evidence that dirt normally contains calcium and magnesium so that anything that removes "dirt" removes these elements, not to remedy Watanabe and/or Ishikawa. Since Appellants agree that the leather intended for use in clothing and shoes is necessarily tanned and that the term "leather" in this context includes Cr-tanned leather within its scope, and since Ishikawa is applied to evidence the Appellants' statement, the combination of Watanabe, Ishikawa and Wu has established a prima facie case of obviousness.

2. Appellants traverse the rejection of claims 85, 90-92, and 119 under 35 U.S.C. §103(a) as being unpatentable over Watanabe and Yoshioka.

(A) Appellants submit that the nonobviousness of claim 76 over Watanabe is established in detail set forth above. Yoshioka fails to address or overcome the deficiencies of Watanabe as applied to independent claim 76.

The Examiner respectfully disagrees with this argument. for the reasons discussed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Art Unit: 1792

Respectfully submitted,

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